

H-5420-1 - PREPARATION FOR SALE

TIMBER SALE MANAGEMENT PRACTICES AND CONTRACT STIPULATION POLICY

.1 Introduction. This policy defines acceptable management practices and related work requirements for BLM timber sale contracts. The purpose of this policy is to provide direction for developing uniformity within and between districts while ensuring the legality of work requirements included in timber sale contracts.

The objective of this policy is to ensure that timber sale contracts contain only work requirements that enable the sale of timber and are consistent with existing laws, regulations, and land use plans. These requirements must be related to timber harvest, site preparation, or mitigating measures and design features necessary to protect or restore the environment for anticipated impacts from road construction, timber falling, timber yarding, site preparation, slash disposal, and other harvest-related activities.

.2 The Four-Point Test. This portion of the policy defines, in more specific timber sale contract terms, the Solicitor's four-point test (opinion of Regional Solicitor dated January 10, 1972) for determining whether a potential timber sale requirement would constitute an augmentation of appropriations or would be an acceptable element of a timber sale. Augmentation of appropriations is defined as the supplementing of appropriated funds with funds from other appropriations or other sources not specifically authorized by law. Without specific statutory authority, the bartering of Government property (the value of timber) for services is prohibited because it would result in an unlawful augmentation of an Agency's appropriations. For inclusion into a timber sale contract, any requirement must meet all four points. This test applies to all designated requirements (and those comparable to provided examples), including those specified as Approved Requirements in this Section .51 of this policy.

.21 Test No. 1 - Is the requirement relevant to the sale of timber? Contract requirements (provisions/specifications) must be relevant to the purposes of the timber sale and the objectives of the Land Use Allocations (LUAs) as stated in local and regional land use plans. Purposes would vary between LUAs. For Allowable Sale Quantity (ASQ) sales, i.e., chargeable volume, meeting the test of relevance may justify the inclusion of requirements to preserve elements of late-successional forest (e.g., retention trees, coarse woody material, etc.). For non-ASQ sales, i.e., non-chargeable volume, meeting the test of relevance may justify the inclusion of requirements to achieve the habitat objectives of the sale.

H-5420-1 - PREPARATION FOR SALE

For all sales, meeting the test of relevance would include mitigation measures and/or Best Management Practices (BMPs) associated with falling, yarding, road building, etc., which are required to achieve the timber sale purposes and the objectives of the LUAs as stated in the land use plans. For example, contract requirements such as falling and partial removal of timber within Riparian Reserves or Late Successional Reserves (LSRs) to meet LUA habitat objectives could be relevant to the purposes of the project.

.22 Test No. 2 - Is the requirement usual in such transactions? Contract requirements are considered usual if they have historically been included within timber sale contracts. However, the shift to land use plans based on ecosystem management is redefining what is usual in such transactions. The new land use plans mandate requirements which would not have been considered usual under previous land use plans, e.g., cutting and leaving reserved trees to enhance the coarse wood component in the treatment area. In general, contract requirements should not specify unusually high levels of skill, specialized knowledge, or specialized equipment not normally required to conduct forestry operations and/or associated mitigation.

.23 Test No 3 - Is the requirement reasonable to make effective the power to sell Government timber? Contracts must include requirements which enable the timber sale to proceed in compliance with applicable laws, regulations, and land use plans. An example would be a requirement necessary for compliance with the Endangered Species Act (ESA), e.g., terms and conditions specified in biological opinions. Another example would be requirements necessary to meet specific Standards and Guidelines contained within land use plans, such as decommissioning of roads constructed under timber sales or an equivalent mileage elsewhere in a Key Watershed. An additional example would be for sales in Riparian Reserves, the silvicultural prescription must promote desired vegetation characteristics needed to attain Aquatic Conservation Strategy (ACS) objectives.

.24 Test No. 4 - Is the requirement in the best interest of the United States? All contract requirements should appropriately provide safe working conditions for purchasers, contractors, their employees, and BLM employees. The requirements must also result in a safe environment for all users of BLM lands.

H-5420-1 - PREPARATION FOR SALE

In most cases, the contract will require the lowest cost methods to accomplish project objectives while providing, but not exceeding, the necessary or required level of environmental protection (e.g., not requiring a more expensive logging system to mitigate impacts below the level of impact anticipated in the relevant environmental impact statement [EIS] and land use plan). Exceptions will rely on documented justification showing that the higher cost, or greater level of mitigation than required in the EIS and land use plan, is in the best interest of the Government.

Evaluation of Test No. 4 includes considerations such as the proximity to Cutting Area, Contract Area, or haul route. The question should be asked: "Is the work within, adjacent to, or at a location distant from a sale unit?" Work could also be suitable for consideration (assuming it meets all four points) if it is in the same geographic location and must occur at the same time as the timber sale in order to be operationally effective.

.3 Definitions.

A. ASQ Sales. Regulated or chargeable volume from the land use plan LUAs that comprise the net available acres of suitable commercial forest land on which the ASQ calculation is based.

B. Cutting Area. The specific area in which the harvest of designated timber is to occur.

C. Contract Area. The area in which timber harvest activities are to occur as legally defined within the contract. The Contract Area is comprised of the quarter-quarter sections (forties or lots) within which the Cutting Areas, including rights-of-way, are located.

D. Haul Route. The roads authorized for timber and/or mineral haul that comprise the most economical route considering safety, distance, road type, road control, improvement needs, and mitigation required by law and/or in land use plans.

E. Road Closure. Any one of four methods which either control access, reduce sedimentation, restore hydrological processes, or enhance habitat. The four methods defined in the western Oregon Transportation Management Plan are Temporary/Seasonal Closure, Decommission, Full Decommission (hydrologic obliteration), and Obliteration (full site restoration).

H-5420-1 - PREPARATION FOR SALE

.4 Policy Goal No. 1. To limit contract stipulations (work requirements) to activities which meet the four-point test as defined in Section .2 of this policy.

.41 Review Process. The contracting officer is responsible for using reasonable discretion in applying the following process for selecting appropriate timber sale management practices and work requirements:

A. Review the silvicultural prescription, the out-year sale plan, the watershed analysis or other relevant assessment(s), the biological opinion(s), the EIS and land use plan, and the proposed environmental assessment (EA) to ensure that selected management practices for each tract are consistent with their requirements and with the value of the proposed sale volume.

B. Review each sale tract to ensure that road construction, use, and maintenance is consistent with the Transportation Management Objectives (TMOs). TMOs must accommodate the fluidity of long-range timber sale plans to ensure roads are not unnecessarily closed.

C. Review required and/or proposed mitigating measures and design features. Design features are mitigation measures incorporated into a contract stipulation. Adopt measures necessary to mitigate the anticipated impacts of road construction, timber harvest, site preparation, or hazard reduction to meet the Standards and Guidelines established in land use plans.

D. Review the proposed harvest system (falling, yarding, transportation) and associated mitigation for each tract to ensure the system provides, but does not unjustifiably exceed, the necessary level of site protection. The necessary level of site protection would usually be construed as that needed to reduce or mitigate the level of impacts to that level identified (and not below the level) in the EIS or as necessary for compliance with laws such as the ESA. If necessary, prepare an economic analysis of alternatives which compares the cost of each alternative relative to the level of environmental impacts and benefits. If excessive costs are associated with the amount of work that is required for mitigating measures or design features, a change in the timber sale may be in order (e.g., change in a road specification, sale boundary, logging method, or site preparation or hazard reduction method). Such a change may necessitate an amendment to the EA.

E. Ensure State Office review and approval of new contract language, i.e., use of stipulations (special provisions) not already provided in Appendix 6 of H-5420-1.

H-5420-1 - PREPARATION FOR SALE

.5 Policy Goal No. 2. To specify examples of BMPs and associated contract stipulations (work requirements) that are consistent with Policy Goal No. 1 in Section .4 of this policy and meet the requirements set forth in local and regional land use plans.

.51 Approved Requirements - Requirements which: 1) accomplish timber harvest, site preparation, and/or hazard reduction, and 2) mitigate anticipated impacts which are a direct result of the proposed timber sale and must be addressed in the work requirements of the timber sale contract in order for a sale tract to legally proceed to sale:

A. Roads. The development and maintenance of a safe and environmentally sound road system may be required for timber harvest and/or transport of equipment, mineral materials, and logs:

1. Roads may be constructed, renovated, improved, or maintained only to standards needed for safe logging and transport of equipment, mineral materials, and logs in accordance with state safety codes and to comply with environmental protection requirements set forth in land use plans, and terms and conditions found in biological opinions. Examples of approved requirements are culvert replacement or upgrading to a size capable of handling a 100-year flood event, slope stabilization, supplying and applying rock surfacing, and seeding and fertilizing cut and fill slopes. However, when seasonal restrictions prevent winter logging operations, limited (generally four-inch depth) rock application may be required under the timber sale in order to provide a light-duty, hard-surface road for surface erosion control and for reforestation access purposes.

2. Roads necessary for access to the timber sale may be surveyed and designed under the timber sale contract when sufficient BLM engineering staff is unavailable.

3. Generally, purchasers should not be required to construct permanent bridges. If appropriated funds are not available to construct bridges needed to sustain a district's timber sale program, temporary structures may be built in order to access timber sales. Inclusion of the construction or development is prohibited if it would result in a deficit sale or a no-bid sale.

H-5420-1 - PREPARATION FOR SALE

4. Roads in the Contract Area and/or comprising the haul route may be closed (see Section .3. Definitions - Road Closure). The standards and extent of this work must be limited to what is necessary for the timber sale to comply with the Standards and Guidelines set forth in land use plans. Additionally, roads outside of the Contract Area and/or not comprising the haul route may be closed if required to meet a Standard and Guideline (such as the Key Watershed one-to-one mile decommissioning) or to comply with the terms and conditions of a biological opinion.

5. Purchasers may be required to supply or apply bituminous material when providing an approach to an asphalt road, for dust abatement, for traction on steep grades, for safety reasons, or when it is more cost effective than aggregate surfacing.

6. Purchasers may be required to supply and/or stockpile additional surface rock which may be needed for surface replacement or maintenance on the Contract Area or along the haul route. Such material shall be placed on the Contract Area or along the haul route prior to termination of the contract.

7. Purchasers may be required to install permanent road signs and temporary traffic control signs on the timber sale haul route. All permanent signs and materials will be supplied by the Government.

8. When contracts require rock surfacing, water sources may be constructed and/or rock sources may be developed. If dust abatement is necessary on the haul route, water sources may be constructed.

9. When necessary for the proposed timber sale to comply with the ESA or other laws, existing roads (or portions of roads) may be relocated.

10. Rock or wood chip surfacing may be placed on landings located on existing paved roads to protect blacktop surfacing.

11. Landing pullback may be required to prevent land and/or debris slides.

H-5420-1 - PREPARATION FOR SALE

B. Falling and Yarding. The falling and yarding of timber will be subject to provisions for protecting the environment, residual trees, and human safety:

1. Directional falling within Cutting Areas may be required to protect resources such as Riparian Reserves, protection buffers, streams, and/or adjacent stands. Specific methods such as pulling (lining) or jacking may be required in the special provisions.
2. Limbing before yarding may be required to protect residual trees or for other environmental concerns, such as soil protection, nutrient cycling, etc.
3. Aerial yarding systems may be required to protect environmentally sensitive resources when adequate protection cannot be achieved by other means, when it is more cost effective, or when it is the only feasible method (e.g., access).
4. Falling or yarding activities outside a cutting area may be required if necessary for safety or to allow normal timber harvest activities to proceed (danger trees, tail trees, guyline trees, etc.). This would include danger trees along a haul route.
5. In reserve LUAs, portions of the volume to be felled, not to exceed 50 percent of the total volume by Cutting Area, may be reserved and left in place. Potential rationale for this would be the creation of coarse woody material and/or treatment of disease areas to meet habitat or conservation strategy objectives in order for the timber sale to comply with the Standards and Guidelines set forth in a land use plan.
6. Whole-tree yarding, gross yarding, piling, or relocating of slash may be required for safety, silvicultural, necessary environmental protection, and/or hazard reduction purposes.
7. Tree-protective devices, such as "Tree Savers," may be required to protect residual trees used as rub trees.
8. Where necessary to provide adequate guyline or tailhold anchors, "deadmen anchors" or "rent-a-stump" crawler tractors may be required.

H-5420-1 - PREPARATION FOR SALE

C. Vegetative Treatment and Residual Trees. The treatment of residual trees may be required for timber stand improvement purposes or to meet requirements set forth in the land use plan and the silvicultural prescription:

1. Cutting and/or removing damaged reserve trees within a Cutting Area may be required.
2. Applying materials to prevent or retard sprouting of stumps within a Cutting Area may be required.
3. Slashing and/or removing vegetation to specified diameter and/or height limits within a Cutting Area may be required when necessary to achieve silvicultural objectives.

D. Site Treatments. The treatment of a harvested site may be required to prepare the site for the next generation of trees or to mitigate the impacts of the operation:

1. Ripping, tilling, or subsoiling haul roads, skid roads, landings, and other compacted areas may be required in Cutting Areas. Ripping, tilling, or subsoiling of designated skid roads to be used in future harvest operations should only be required if necessary to meet soil productivity standards in a land use plan.
2. Scarifying, slashing and/or piling, and underburning may be required within a Cutting Area.
3. Clearing debris from stream channels within the Contract Area may be required when the debris results from the purchaser's operations.
4. Clearing natural debris from stream channels within Cutting Areas or along the haul route may be required to mitigate the effects of the timber sale. In most cases, clearing natural debris from a stream channel would be an uncommon occurrence necessitated by the threat of unacceptable resource damage should the debris move and/or obstruct water flow through a culvert.

H-5420-1 - PREPARATION FOR SALE

E. Slash Disposal and Hazard Reduction. The disposal of vegetative material within a Cutting Area may be required for silvicultural, forest health, and/or fire hazard reduction purposes:

1. Yarding, lopping, crushing, and scattering of slash, hand or machine piling of slash, covering slash piles, constructing firebreaks, chipping or grinding slash, underburning, and burning slash may be required within a Cutting Area.

2. Constructing or improving pump chances or heliponds in the proximity of the Contract Area or haul route may be required for fire presuppression or suppression when prescribed burning is required on a Cutting Area.

3. Creating shaded fuel breaks, or other necessary fuel or site treatments, may be required within a Cutting Area for fire presuppression or hazard reduction. Creating shaded fuel breaks, or other necessary fuel or site treatments, may also be required within the Contract Area or close proximity when necessary for presuppression associated with prescribed burning to occur under the contract.

F. Wildlife Habitat. Work requirements may be included in the timber sale contract when required to mitigate anticipated effects of harvesting on wildlife habitat and meet the requirements of land use plans:

1. Leaving reserved trees within a Cutting Area in accordance with land use plans may be required, provided they do not render logging infeasible or constitute an undue safety or fire hazard. Types and placement of reserved trees will meet the requirements set forth in the land use plan, silvicultural prescription, and logging plan.

2. Removal of tops or girdling of reserved trees may be required to create snags within a Cutting Area to the extent necessary to mitigate anticipated snag reduction resulting from the sale. Topping may also be required to reduce the windthrow potential.

3. Falling of reserved trees to create coarse woody material within a Cutting Area may be required to comply with Standards and Guidelines or other requirements set forth in the land use plans (e.g., meet the lineal foot requirements). Those portions of such felled timber which result in logs with diameters too small to meet the size criteria for coarse woody material may be removed. Estimates of the volume of such material should be included in the cruise volumes.

H-5420-1 - PREPARATION FOR SALE

4. Trees may be felled and not removed (reserved) for yarding corridors in reserved areas adjacent to, or in between Cutting Areas.

G. Miscellaneous Provisions.

1. Minimum state fire requirements must be met. Additional requirements may be stipulated only where special hazards are identified. BLM is not bound to recognize any state requirements which have been waived by the State on an individual sale area.

2. Treating or capping stumps of cut bearing trees within or immediately adjacent to a Cutting Area may be required.

3. Special provisions may be required where insect, disease, or noxious weed control is necessary or required such as for bark beetles, laminated root rot, Port Orford cedar root rot, or invasive plants.

.6 Prohibited Actions. Proposed contract requirements to achieve land use plan objectives that have no direct relationship (refer to the Four-Point Test) to the proposed timber sale, or do not provide required mitigation of the effects of the proposed timber sale, or requirements not specifically identified as, or comparable to, the Approved Requirements in Section .51 of this policy. Exceptions to this policy must have written State Director approval. An alternative for efficient accomplishment of actions prohibited from inclusion in a timber sale is accomplishment of the action with a concurrent procurement contract, possibly with the advance approval of a sole source justification of contracting with the successful high bidder (purchaser).

.7 Sales Funded by Special Appropriations or Accounts. The preparation of contracts for sales funded by special appropriations or accounts such as the 5900 subactivity (Forest Ecosystem Health and Recovery Fund) may entail greater flexibility than generally provided by the guidance in this appendix. Refer to subactivity specific direction for additional guidance.